

# **Town Council Special Meeting**

## **Minutes**

### **August 8, 2016**

The meeting was called to order at 7:00 pm.

#### **Roll Call**

All Councilors were present and answering roll call.

#### **Item 1      Public Hearing on amendments to the Code of Ordinances, Section 9.92, to change the membership of the Harbor/Waterfront Committee.**

Councilor King said Chief Tolan has submitted a memo to further explain the committee's request. The committee recognized that there may be times when having a non-resident might provide value to the committee. They recommended three but are agreeable if the Council wishes to reduce it, asking that there be at least one non-resident.

Chair Farber said the proposed language is different from what it was two weeks ago, leaving the number of allowable non-residents blank for the Council to decide. She asked if they needed a new introduction.

Mr. Poore said if it was more than three he would recommend a new introduction, but not for three or less. The Council could decide to re-introduce it if they wanted.

Chair Farber opened the public hearing.

Richard Craven of Oxford Woods Road, a member of the Harbor Committee for the last three years, spoke about the inclusion of Handy Boat and the Yacht Club as ex officio members of the committee. There is no Falmouth resident who can fill Handy Boat's seat. There is benefit in having those organizations at the table. It may also be valuable to have a non-resident; in case a member was to move out of town, for example, it would be good to keep their knowledge and experience.

Richie Garrett of Birch Drive, a member of the Harbor Committee, pointed out that the voting part of the language says that they would need 3 residents for a vote to pass. They need to have 3 non-residents allowed: one for Handy Boat seat, one for a long-standing member that is moving out of town, and one for the Yacht Club in the case they ended up in the same situation as Handy Boat. He has received phone calls from citizens that are concerned about non-residents on the committee.

Public hearing closed.

Councilor King said there is a discrepancy: the memo from the police chief said "up to three" non-residents but the committee wants three. She thought Handy Boat and the Yacht Club were voting members.

Councilor Svedlow said he supported the representatives from the businesses being non-residents, but he didn't support an at-large, non-resident member. There are many qualified residents that could serve.

Councilor McBrady said the Appointments Committee has seen interest from citizens that want to serve on that committee but can't because it is full.

Councilor Hemphill said there are members of the public that attend meetings and voice their opinions. That is a way to be involved in the decisions of the committee. Councilor King agreed.

Councilor Ferrante suggested amending the ordinance, allowing the representatives of Handy Boat and Yacht Club to be non-residents. The Council agreed with this change.

The order was scheduled for August 22. Public comment will be taken at that meeting.

**Item 2            Update on the Mill Creek Force Main project.**

Mr. Poore handed out an updated spreadsheet showing the current project costs. The town was under budget for the pump station project and it is currently under construction. They only received one bid for the force main portion of the project, and it was significantly higher than expected. They have been working to negotiate it down and restructure the project, but the result is that the budget is higher than anticipated. After the agenda for tonight's meeting was posted, staff and bond counsel discovered the need for the Council to approve an appropriation for \$90,699 from the enterprise fund; this is on top of the appropriation the Council approved in March. They would like to award the bid tomorrow.

Councilor Ferrante asked if there was an option to reduce the amount in the PVC numbers.

Mr. Poore said that would be included in the debt buy-down and would be decided later. They have borrowed \$4 million to date; they will decide the final borrowing after they receive some final numbers.

Chair Farber clarified that this is coming out of the enterprise fund, which comes out of sewer fees and not tax dollars.

Councilor Hemphill moved to suspend council rules, section 11, which requires an order to be filed with the Town Clerk, in order to consider an appropriation from the enterprise fund. Councilor King seconded. Motion carried 7-0.

Councilor King said the Council had discussed using \$1 million from this fund, after the project's final costs were known, to reduce the borrowing. She asked if this \$90,700 will be taken from that \$1 million. Mr. Poore said that was correct.

Councilor Svedlow asked if there was any confidence that this was the last overrun. Mr. Poore said there are no guarantees, but there is a little over \$200,000 in the contingency fund. He felt comfortable that the contingency will be enough.

Chris Dwinal of Wright Pierce agreed with Mr. Poore. There have not been any change orders with the pump station project, and it will be complete soon.

Councilor King asked when they will receive the final project numbers. Mr. Dwinal said it will be probably a year or more after construction is complete.

Councilor King moved the order appropriating \$90,700 from the Wastewater Enterprise Fund to finance the Mill Creek project. Councilor McBrady seconded. Motion carried 7-0.

**Item 3            Receipt of an application by Verizon Wireless for conditional rezoning to construct a Tier III tower and presentation by the applicant.**

Scott Anderson from Verrill Dana, representing Verizon Wireless, explained the locations of the current towers in and around Falmouth. There is a hole in coverage in the center of Falmouth. They are purposing to fill that hole by 1. adding an antenna to the existing tower along I-295; and 2. building this new tower at 175 Falmouth Road. Their first goal is always to fill coverage holes by co-locating on an existing tower. He spoke about the proposed height of the new tower: their application initially stated the tower would be 90 feet high, but since that time their engineers have suggested that the tower needs to be 110 feet high in order to meet their coverage objectives. The radio frequency (RF) report recently submitted includes coverage maps for that tower height, but they do not have photo simulations yet. These photos come from a balloon test; they would like to set up a date and notice the public for a balloon test for the increased height. The application they submitted was designed for both the Planning Board and Council reviews. They expect the Town to retain a third-party civil engineering firm to peer review all their reports.

Councilor Svedlow asked what state permitting is required. Mr. Anderson said DEP, there is a wetland crossing for the access driveway as well as other wetland considerations, and perhaps an Army Corps permit as well.

Councilor Svedlow asked about a decommissioning plan for the tower. Mr. Anderson said they do that for every site they permit; it may not have been a requirement for this particular application. They would file one with the Code Office either during permitting or the Planning Board process.

Amanda Stearns, Community Development Director, said there are two ordinances that govern this process: the wireless siting ordinance and the zoning ordinance's conditional rezoning section. She said the Planning Board would review and issue the permit if the Council approved the conditional rezoning. The Council's process is to first receive the application and then go through a review period in order to determine whether the rezone should be approved. They have the option to refer the application to the Planning Board, either for general review or for specific review of certain standards. They have the option to refer to a third party peer review for more technical review, or to other committees. The process requires two sets of findings: one set of three for the conditional rezoning, and another set of three under the wireless ordinance. The Council can make those findings, or they can ask for assistance in making them. The Council needs to hold a public hearing, and the Planning Board needs to hold a MRA hearing which must include a specific map of the area to be rezoned and a list of the specific conditions and restrictions.

Councilor Svedlow asked about the RF report. Mr. Anderson said it explains the need for the tower and shows that no existing structures could be used to meet their coverage goals. They can provide an estimate of the amount of the RF frequency in the area by the tower, which is required by the FCC.

Councilor Hemphill moved to suspend Council rules, section 11, in order to consider an order to refer the application to the Planning Board, or another third party, for review and recommendations. Councilor McBrady seconded. Motion carried 7-0.

Chair Farber asked if the Planning Board would seek the assistance of a peer reviewer anyway.

Ms. Stearns said review of capacity is part of the Council's review process and not the Planning Board's permitting process, but the Council can ask the Planning Board to review the capacity study as part of their review on the Council's behalf. She wasn't sure whether they had done third party review for past applications.

Mr. Anderson said it will take them a few weeks to schedule the balloon test and the Planning Board application deadline is 28 days prior to their meeting so they are looking at October at the earliest. He said Verizon Wireless would prefer the Town hire a third party to review the capacity report.

Councilor King was in favor of a third-party review. Councilor Hemphill agreed.

Councilor Kitchel asked the cost; Mr. Poore didn't know, but said the cost would be carried by the applicant. Ms. Stearns didn't know either; she has identified one other firm in the Northeast that is qualified to review it, other than the firm that drafted it.

Councilor Kitchel asked about the role of the abutting landowners. Mr. Anderson said the standards they have to meet in the land use ordinance, and the public comment taken during the required hearings, would capture and address the impact on abutting properties.

Chair Farber said there would be two or three opportunities for the public to comment between the Council and the Planning Board processes. Ms. Stearns said that was correct; they could make a formal request of the Board to hold a formal public hearing as part of their review.

Chair Farber opened a public comment period; there was no public comment.

Councilor King moved to send the application to the Planning Board for review and recommendation, and to send the RF report out for peer review by a third party. Councilor Hemphill seconded.

The Council requested that the Planning Board hold a public hearing as part of their review process.

Ms. Stearns asked if the Council wanted staff to initiate the peer review or to choose the firm themselves once one or two are identified. Councilor Svedlow asked for a memo from the applicant stating that they will cover the cost of the peer review. Ms. Stearns said staff will report back on the choice of firm.

Motion carried 7-0.

**Item 4            Order to accept a report from town staff relative to broadband network access in Town.**

Mr. Poore said this map demonstrates the availability of broadband in the growth areas. They did not study the rural areas, since the comp plan specified the growth areas in the recommendation. Staff hired Tilson Technology to review the availability of fiber in Town and examine the potential to build a high-speed network to connect the Town properties. Tilson also interviewed the two biggest users of broadband in Town, TD Bank and Tyler; each of them have multiple, redundant high-speed access. Staff have determined that it doesn't make sense for the Town to build a system to connect municipal facilities, nor to build a system to encourage economic development in town. Current access is more than sufficient.

Councilor Hemphill asked if there is any planned expansion of these broadband providers into other areas of town, where access is less available. Mr. Poore said they didn't evaluate access in the rural areas; they could, if the Council wanted to expend more consulting money.

Pete McHugh, Finance Director, didn't think they would see much expansion in the rural areas. The market in the growth area will determine what the companies build. It might come in the future. Even in the rural areas people have the option between Fairpoint and Time Warner and speeds are satisfactory. Falmouth is well served.

Chair Farber opened a public comment period; no public comment.

Councilor King moved the order; Councilor Ferrante seconded. Motion carried 7-0.

**Item 5            Discussion on a proposal to ban parking on Farm Gate Road.**

Chair Farber said this was an item that came up during discussions on development at the TV-3 site in April 2015 and the Ordinance Committee discussed it. Since then, the Rivalries restaurant has been approved and residents have approached Chair Farber about this request. She proposed, in consideration of the workload already on the Ordinance Committee, that the Council ask staff to draft proposed ordinance language to ban parking along Farm Gate Road according to the map provided and subject to an 18-month sunset provision, in order to review it to make sure it was still necessary and was working as designed.

Councilor Hemphill said there are 10 on-street parking spaces indicated on the map. He said the proposed ban would not apply to those spaces. Chair Farber said that was correct.

Councilor King said this is a public street. The only other parking ban in town is the seasonal ban on Andrews. She thought they are assuming this would be a problem before it even occurs. She asked if the street was sufficiently wide to allow parking on both sides of the street. Chair Farber said legally there is parking potential on both sides.

Councilor King drove down the street, and wondered if it would be safe to have parking on both sides of the street.

Councilor Svedlow said one side is improved with a sidewalk, and the other is bare pavement. He thought they should consider each side of the street separately.

Councilor McBrady agreed that they are anticipating a problem that isn't there. He was hesitant to consider banning parking and asked what the rush is.

Chair Farber said it takes a while to address it once there is a problem. She would likely begin the ban at Marigold instead of at Clearwater as requested by the Homeowners Association. She didn't think this is an unreasonable request. She felt it was a mistake to wait until there was a problem; habits are already formed by then.

Councilor Kitchel wanted more time to review the area and wondered if they could push it off. Chair Farber felt they could.

Councilor King pointed out that this would set a precedent, and she encouraged the Council to review the principle behind considering a parking ban; this would lead to other requests. They also have to consider the impact to parking on public ways.

The Council will consider this item again at a later date.

**Item 6            Order to authorize the Town Manager to proceed with Phase 2 of the Town Landing Parking Evaluation.**

Councilor McBrady said the committee has met twice to consider the future of 260 Foreside Road. They are recommending a parking study to determine whether there is a problem and how they want to discuss this with the public.

Councilor Hemphill said a parking study is ideal at this time of year when it is at peak use. The committee is requesting full funding of the study.

Councilor Kitchel clarified that the committee is holding all options open. The property was not specifically acquired for parking; it was one of the options discussed at the time.

Councilor McBrady moved the order; Councilor King seconded.

Councilor King asked if they are going to be counting bikes and pedestrians as well; Mr. Poore didn't know but he would find out.

Motion carried 7-0.

**Item 7            Introduction by the Community Development Committee (CDC) of a zoning amendment to enact contract zoning.**

Councilor King introduced the item and discussed the process the CDC has taken to draft the language. They have discussed it with staff, the town attorney, and reviewed language from other communities. They asked the Planning Board to review the concept; a memo to the CDC from the Planning Board said the Board felt it was a good tool, saw it as a favorable change, asked why it was being restricted to the residential districts, and requested that language be added requiring abutters to be notified early on in the rezoning process.

Councilor Hemphill spoke about the suggestion to expand this beyond the residential districts. He said the commercial growth areas have underlying zoning that is different enough that they didn't want to offer this beyond the residential. They could add additional areas in the future, but this is their first pass at using this tool. Councilor Kitchel agreed; he was open to extending this but looked at it as a phase 2 of this amendment. He recommended that they move forward with what they have now and consider an amendment to expand it to the whole town at a later date.

Councilor Svedlow asked why they would not include other districts. Councilor King said VC-1 and VC-2 are form-based. Those districts have a certain look and feel to the zoning. She would like projects to come forward under that zoning, to best achieve that zoning's goals. Contract zoning allows for certain exceptions

to the underlying zones. The zoning for Route 1 and Route 100 is still under consideration for zoning changes; she thought they should wait to see what develops in those areas before they allow contract zoning.

Councilor Svedlow thought that implied that the zoning in the village areas was well thought out, which seems to indicate that the residential zoning was not as well thought out.

Councilor Ferrante supported expanding this to all areas. It requires exceptions to be well thought out. She didn't see any reason to withhold it from Route 100 or VMU. She felt it important to have it in those areas that don't have revised zoning yet, since that takes time. She was bothered that this is being pushed by one applicant, and is only being applied to their zone.

Councilor King said the rezoning of the residential areas was to guide growth into the growth areas, and to allow different types of housing development.

Councilor McBrady agreed that this would help Route 1 North and Route 100 while they are working on the zoning in those zones.

Chair Farber strongly supported expanding this to the Route 100 area, specifically MUC and VMU. The Route 100 committee did a great job, but they were focused mainly on infrastructure instead of a comprehensive study like they did for Route 1. She agreed that it is disconcerting to do something like this for just one project. She was hesitant to use this in VC because they have done such a recent, comprehensive job on that area. Chair Farber agreed with the Planning Board's suggestions for abutter notification and Town Attorney review of the language.

The Council discussed the process moving forward, whether to finalize language tonight or to send this back to CDC to incorporate their feedback. Ms. Stearns said adding specific districts would be relatively simple, but neither staff nor the CDC has reviewed the provisions and submission requirements and how they would apply to commercial districts.

The Council's consensus was that they were comfortable with staff/CDC incorporating the Planning Board's suggestions for abutter notification and final review by the Town Attorney into the language. The majority of the Council was agreeable with the concept of expanding this to more districts. They discussed what would be necessary for staff and the CDC to review the possibility and reintroduce it at the next Council meeting. An informal poll of the Council was done on which commercial zones they would like to see included; there was interest in including the BP, MUC, and VMU.

A public hearing was scheduled for September 12.

**Item 8            Order to go into Executive Session pursuant to the Laws of Maine to discuss and consider the disposition of real estate rights, pursuant to 1 M.R.S.A. § 405 (6) (C).**

Councilor King moved the order; Councilor Svedlow seconded. Motion carried 7-0.

The Council entered executive session at 9:30 pm and did not return.

Respectfully submitted,

Melissa Tryon  
Recording Secretary